(1993) 03 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 714 of 1989

Xl Telecom Pvt. Ltd. APPELLANT

Vs

Union of India. RESPONDENT

Date of Decision : 03-03-1993

Acts Referred:

Citation : (1993) 42 ECC 90 : (1993) 47 ECR 171 : (1994) 70 ELT 530

Hon'ble Judges : V.A. Mohta, J;S.M. Jhunjhunwala, J

Bench : Division Bench

Advocate : Dr. N.R. Kantawala and Mr. V.S. Nankani, for the Appellant; Shri V.G. Rege, for the Respondent

Judgement

V.A. Mohta, J.—Common and only question that arises for determination in this batch of Petition is whether, the subject articles "Components for Cable Jointing Kits" merit classification Chapter 85 Heading 47, or Chapter 39 Heading 26 of the Customs Tariff Act (''the CTA'').

2. We reproduce the two Headings for ready reference :

"85.47 - "Insulating fittings for electrical machines, appliances or equipment, being fittings wholly insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for purposes of assembly, other than insulators of Heading No. 85.46; electrical conduit tubing and joints therefor, of base metal lined with insulating material".

39.26 - "Other articles of plastics and articles of other materials of Heading Nos. 39.01 to 39.14

3926.10 - Office or school supplies

3926.20 - Articles of apparel and clothing accessories (including gloves)

3926.30 - Fittings for furniture, coach-work or the like

3926.40 - Statuettes and other ornamental articles

3926.90 - Other"

There is no dispute about the identity of the subject articles which are imported from Germany. Electrical and/or telegraph cables have to be of considerable length. They are also spread underground. They have to be joined so that they can go into running length as if they are original. Joints have to be insulated in a sophisticated manner so that they are completely dust, air and water-proof ensuring continued supply of power. The cables are of different sizes and the accurate insulation is to be achieved by automatic shrinking of the insulating sleeves to a pre-determined diameter by a single operation of heating. The subject articles - in the making of which plastic is also used as one of the raw material - are used in this highly sophisticated and technical operation.

3. Undisputed position is that for a number of years these articles have been uniformly classified at all departmental levels under Heading 85.46. In April 1987, for the first time, the articles were classified as Articles of plastic under Heading 39.26. Validity of this decision is impugned in these Petitions.

4. In our view, there is no justification whatsoever for this sudden change of policy without the Customs Tariff having undergone any change.

5. Chapter 39 of CTA covers "Plastics and Articles thereof". Heading 39.26 is an omnibus and generic entry. Chapter 85 covers, inter alia, Insulating Fittings, Heading 85.47 contains a specific description of insulating fitting. The principle of "Generalia Specialibus non Derogant" is well known and also applies to classifications of articles under the Customs Tariff. The thread of this principle runs all through even in the General Rules of Interpretation of Entries under the CTA.

6. The other test that can be applied for classification is how the article is identified by the class or section of people dealing with or using the same. In this connection, it may be noticed that the Mahanagar Telephone Nigam Limited, Bombay, as well as Delhi Electric Supply Co. Ltd., have certified the Articles as being ''heat shrinkable insulating material for cable jointing'' used by them only for that purpose.

7. In this context, the Customs Tariff Advice given by the Board by letter dated 17th November, 1989 may also be noted. It states that Heat Shrinking material falls under Chapter 85 of CTA.

8. In most of the Bills of Entry the subject articles are described as components for cable jointing kits. We find that in one or two bills, the articles have been described as "Raw material for manufacturing of components for cable joints kits, - Insulating materials - unexpanded sleeves". The Respondents contend that at least these item merit classification under Chapter 39. We do not agree. Even raw-material for manufacture of components of cable jointing kits cannot be classified as general plastic articles under omnibus Heading 39.26. They are also insulating material capable of automatic shrinking to pre-determined diameters

by a single operation of heating. Heading 85.47 is more akin to these articles than Heading 39.26.

9. It was contended on behalf of the Respondents that we should not entertain these Petition on the ground of the existence of alternate remedy under the CTA. Such exercise, at this stage, would be unnecessary and unjust. These is no factual controversy. The goods have already been released by interim order passed by this Court three years before. The point involved is of law and appears to be obvious.

10. In the circumstances, we declare that the subject goods merit classification under Heading 85.47 of the CTA and we quash the impugned decision of classifying them under Heading 39.26.

11. As a necessary consequence of the above order, the bonds given for the differential amounts in pursuance of the interim orders passed by this Court will have to be discharged; but at the request of Mr. Rege, learned Counsel for the Respondents, we direct that they be discharged only after a period of 12 weeks from today.

12. All these petitions are thus allowed and the rule in each of these petitions is made absolute in the above terms. There will be no order as to costs.